

(1987) 12 CAL CK 0021

Calcutta High Court

Case No: C.R. 945 (W) of 1980

Pradyot Kr. Mukherjee

APPELLANT

Vs

Regional Manager, Bank of India
and Others

RESPONDENT

Date of Decision: Dec. 16, 1987

Hon'ble Judges: S.R. Roy, J

Bench: Single Bench

Advocate: Ranjit Mukherjee, for the Appellant; Prasanta Kr. Mukherjee, for the Respondent

Judgement

S. R. Roy, J.

The petitioner is attached to the Bank of India as a Clerk since December 1969. He is also the General Secretary of the Bank of India National Employees' Congress, Registered under the Trade Union Act.

2. Because of his Trade Union activities the respondents maintain an attitude of anger towards him.

3. The said respondents on 25.1.80 issued a charge-sheet upon the petitioner for certain acts of alleged misconduct and for the purpose of holding a disciplinary proceeding on the basis of the said charge-sheet appointed the respondent No. 2 as the Enquiring as well as the punishing authority, though the said respondent No. 2 belongs to a rival Union, and though the charge-sheet was issued by the respondent No. 1, the Regional Manager, he was made the appellate authority.

4. According to the petitioner the entire act, of the respondents in issuing a frivolous charge-sheet against him, appointing the respondent No. 2 as the Enquiring as well as the punishing authority and also appointing the respondent No. 1 as the appellate authority is malicious and the sole object behind such act is to punish the petitioner in order to curb his Trade Union activities.

5. In the aforesaid circumstances, the petitioner has come up before this Court challenging the charge-sheet and the proposed enquiry proceeding.

6. It, appears that while issuing the rule on 21.2.80 this Court authorised the respondents to proceed with the enquiry but not to pass the final order except with the leave of the Court or until the disposal of the rule. The respondents were further given liberty to appoint any other person as the enquiring authority if they were so advised.

7. The respondents in their affidavit-in-opposition have controverted all the material averments contained in the writ petition and the petitioner has also filed an affidavit-in-reply.

8. Appearing on behalf of the petitioner, Mr. Ranjit Mukherjee, the learned Advocate contended inter alia that the charge-sheet was issued with mala fide intention and ulterior motive in order to teach the petitioner a lesson and with the said object in view the respondent No. 2 was appointed the enquiring as well as the disciplinary authority, who in the past belonged to a rival Union. As regard to the charge-sheet Mr. Mukherjee's contention was that it is vague, ambiguous, indefinite and devoid of particulars and that it was also issued with a closed mind.

9. All the aforesaid contentions raised on behalf of the petitioner, were seriously controverted by Mr. Prasanta Mukherjee, the learned Advocate representing the respondents.

10. Coming first to the charge-sheet (Annexure "D"), it appears that the allegations against the petitioner are (1) he does not report for duty in time; (2) he on several occasions, was orally instructed by the Manager of the Bank to report for duty in time and to do his duty during the working hours, but in vain and (3) he was again instructed by the Manager by his Memo. dated 3.2.79 to be punctual in his attendance and regular in his work, but despite such specific instructions he remained unpunctual and did not attend to his duties.

11. It is true that all the particulars in details regarding the aforesaid charges have not been mentioned in the charge-sheet but that, in my view, does not make the charges vague and indefinite. The nature of the charges clearly indicates that according to the respondents the petitioner is a habitual late attender and also habitually lacks devotion to his duties. And that being so, specific instances of such late attendance and nonperformance of duties have not been cited.

12. In this connection reference may be made to Annexure "E", which is the petitioner's reply to the Memo., dated 3-2-79 issued by the Manager of the Bank directing the petitioner to be punctual in his attendance and to be regular in his work (Vide Charge No. III in Annexure "D"). Significantly, in the said reply the petitioner has nowhere specifically alleged that the allegations contained therein are vague. Thus, the petitioner having understood the implications of the charges it

cannot under any circumstances be said that the charges are vague and indefinite. It was next contended by Mr. Ranjit Mukherjee, the learned Advocate representing the petitioner, that the charge-sheet was issued with a closed mind and as examples of the said closed mind he referred to the following statements in the charge-sheet: "you do not report for duty in time; and you were also not found at your desk during working hours".

but despite such specific instructions you are still unpunctual in your attendance and do not attend to your desk work.

I am, however, unable to accept this contention of Mr. Mukherjee. This is primarily because in the absence of the said averments the charges would have been branded as totally vague, conveying no sense whatsoever.

13. Incidentally, this "closed mind" theory appears now to have been dragged to such a length that any charge against an employee which is sought to be specific and definite is attacked on the ground that it has been issued with a closed mind.

14. In this connection it may be useful to refer to the decision of the Supreme Court in *Powari Tea Estate v. Barkataki (M.K.) and others*, 1965(2) L.I.J 102.

15. In the said case the charge-sheet issued was as follows: "It has been brought to my notice that you have been taking money from labourers at the time of payment of their wages and also from assisted emigrant labourers when they went to sign J forms and also from non-workers in the lines".

16. The charge-sheet further added that "Sri Allison had checked on the information furnished to him against Gohain (chargesheeted employee) and had been satisfied that Gohain had been guilty of the said misconduct. Gohain was, therefore, called upon to offer his explanation why action should not be taken against him for taking bribes from labour on the estate".

17. While considering whether the chargesheet was issued with a closed mind the Supreme Court observed as follows: "This charge, no doubt, is not happily worded and the expressions used in it would seem to indicate that Sri Allison had already made up his mind that Gohain was guilty of the misconduct set out in the charge. In the circumstances of this case, however, we do not propose to base our decision on this infirmity in the charge. We will assume that the charge merely intended to say that Sri Allison was prima facie satisfied that a case for enquiry had been made out against Gohain. We would only like to emphasize that such incautious and loose language in the charge ought to be avoided, because it is likely to create an apprehension in the mind of the employee chargesheeted that the person issuing the charge has already decided the case against him".

18. It need not be emphasized in this connection that persons issuing chargesheets in connection with departmental proceedings are not legally trained persons and as such, incautious and loose language is very often used in the charges, obviously

unknowingly, but for that alone. It will not be proper to say that the charge has been issued with a closed mind.

19. Moreover, if on the basis of such incautious and loose language alone a chargesheet is quashed or set aside the delinquent will go absolutely unpunished however serious his misconduct may be. Because, in such a case even if the language is subsequently changed it will not apparently make any difference since a "closed mind" does not become "open" simply by changing the language of the chargesheet would rather be camouflaging the real intention.

20. In the above circumstances it may be better to assume as the Supreme Court did, that a charge alleged to have been issued with a closed mind, was issued on the satisfaction of the concerned authority that a case for enquiry against the delinquent had been made out.

21. The real attack of the petitioner is, however, not against the charge-sheet but against the appointment of the Enquiring and the Disciplinary authority. According to the petitioner, S. C. De Sarkar, the Enquiring authority is likely to have a bias against him since formerly he belonged to a rival Union, a fact which is not disputed by the respondents.

22. It appears that Sri De Sarkar was formerly a Clerk and was subsequently elevated to the post of a Manager. While he was a Clerk he belonged to a rival Union and this has created an apprehension in the mind of the petitioner that as the Enquiring as well as the Disciplinary authority he is likely to have a biased attitude towards him.

23. In this connection it was contended by Mr. Prasanta Mukherjee, the learned Advocate representing the respondents, that without any proof of biased attitude it would not be proper to say that in the matter of holding the enquiry and also in the matter of acting as Disciplinary authority Sri De Sarkar would necessarily display such an attitude towards the petitioner.

24. The law on the question of bias now appears to be well-settled.

25. A Division Bench of this Court presided over by Anil Kumar Sen, J. held in the *Union of India v. S. N. Chatterjee*, 1981(1) C.L.J. 305 relying upon the decision of the Supreme Court in [S. Parthasarathi Vs. State of Andhra Pradesh](#), that the real likelihood of bias means that there must be a substantial possibility of bias. If a reasonable man, in the facts and circumstances of a particular case would infer that there is real likelihood of bias there it would be held that a real likelihood of bias exist.

26. The question again came up for consideration before the Supreme Court in [Ashok Kumar Yadav and Others Vs. State of Haryana and Others](#), and there it was held that the question is not whether the Judge is actually biased or in fact decided partially, but whether there is a real likelihood of bias. What is objectionable in such

a case is not the decision is actually tainted with bias but that circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done.

27. The latest decision of the Supreme Court on this point is [Ranjit Thakur Vs. Union of India \(UOI\) and Others](#), . There the Supreme Court held that as to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "am I biased" ? ; but to look at the mind of the party before him.

28. In the instant case, it is not disputed that while a Clerk Sri De Sarkar, the Enquiring authority belonged to a rival Union and in these days of Union rivalry which has gone from bad to worse, it is not unreasonable for the petitioner to apprehend that Sri De Sarkar might display a biased attitude towards him particularly because he is not only the Enquiring authority but also the disciplinary or the punishing authority.

29. In the aforesaid circumstances the respondent-Bank in order to remove the apprehension from should have appointed some other person the Enquiring well as the disciplinary authority, if not for anything else, least for the ends of justice and fair-play.

30. However, as it appears, the enquiry proceedings have since been completed ex-parte since the petitioner did not participate in the said proceedings mainly on the ground that the Enquiring authority was likely to have a bias towards him.

31. In my judgment, since the chargesheet is not bad either on account of alleged vagueness or the alleged closed mindedness the enquiry proceeding already held by Sri De Sarkar should be quashed and set aside and the respondent-Bank should be directed to hold the enquiry afresh on the basis of the charge-sheet already submitted, through another Officer of the Bank.

32. It appears that under the Bipartite Settlement the disciplinary authority may also conduct the enquiry himself and that being so, the respondent-Bank may appoint the same Officer as the Enquiring as well as the Disciplinary Authority in the matter of conducting the disciplinary proceeding against, the petitioner and in the matter of awarding punishment if the petitioner is ultimately found guilty of the charges.

33. It appears that the former Regional Manager of the Bank, who issued the chargesheet, was also made the Appellate Authority. This has invited scathing attack from Mr. Ranjit Mukherjee, the learned Advocate representing the petitioner. In my judgment, the said objection raised by Mr. Mukherjee is not without substances since it is likely that the Officer issuing the chargesheet may not be in a position to maintain an unbiased and impartial attitude in the matter of disposing of the appeal

if any such appeal is ultimately preferred by the petitioner on his being found guilty of the charges by the Enquiring authority and on his being punished by the Disciplinary authority.

34. However, the Regional Manager, who issued the charge-sheet, having since retired, the question now becomes more academic than real. Moreover, under the revised rules of the Bank, the Deputy General Manager will now be the appellate authority so far the petitioner is concerned.

35. Before I conclude, I propose to deal with the contention of Mr. Prasanta Mukherjee, the learned Advocate for the respondents, that the instant writ petition should be rejected as premature since it was filed before the conclusion of the enquiry proceedings and before any punishment was inflicted. In support of this contention Mr. Mukherjee relied upon the decision of the Supreme Court in [Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others](#) . But there, as it appears, the facts were different. There, the appellant who was charged for misconduct, was initially exonerated by the Secretary of the Bank. The Managing Director, however, held such proceeding as invalid and issued a Show Cause Notice. The writ petition filed by the appellant against such Show Cause Notice was held to be pre-mature as no punishment had been inflicted. This was on the ground that the Managing Director was bound to consider the plea of jurisdiction based on reopening of a closed enquiry. But, here the facts are entirely different since the proposed enquiry proceedings have been challenged on the ground that the enquiring Officer was likely to be biased.

36. Incidentally, it may not also be out of place to mention here, that the petitioner in order to sabotage the charges levelled against him has alleged all sorts of mala fide against the respondent-Bank.

37. His main allegation is that the Bank authorities have levelled false charges against him in order to curb his Trade Union activities. But such stereo-typed allegation, if I may say so, is now being made possibly for the umpteenth time by a Union leader since this is probably the only convenient way to cover up all his lapses. To uphold such objection would be to make it impossible for the management to take any action against a union official, however, gross his misconduct may be. It would be needless to emphasize in this connection that a Union leader should owe as much allegiance to his employer as he owes to the members of his Union and should not try to take undue advantage of his status as a "protected workman".

38. It may be mentioned here that in the instant case the petitioner was asked by the management to see certain police officials at Lalbazar in connection with a case on such request being officially made by the police. But the petitioner has tried to make capital of this situation by giving out that it is only an attempt by the management to get him falsely implicated in a police case.

39. Not only this, the petitioner in his craze has set an all-time example by drawing up a parallel disciplinary proceeding against the Enquiring Officer as it will appear from annexure "A" to the affidavit-in-opposition filed by the respondent No. 2.

40. I wonder whether this is healthy trade unionism or sheer fanaticism. Has one to presume that trade unionism abhors sanity and sobriety!

41. Be that as it may, in view of the findings above, the Rule issued is made absolute in part. The enquiry proceeding already concluded through Sri De Sarkar is hereby quashed and set aside. The respondent-Bank is, however, given liberty to hold the enquiry proceedings on the basis of the chargesheet already issued (Annexure "D") through another Officer who may, in the discretion of the authority, also be made the Disciplinary authority in terms of the Bipartite Settlements. Such enquiry, if commenced, should be concluded within a period of sixty days from the date of the commencement of such proceedings. It is expected that the petitioner should participate in the said enquiry without trying to sabotage it by raising frivolous, unreasonable and unjustified objections and if he chooses not to do so, the enquiry may be held ex-parte and the Bank will be at liberty to take appropriate actions against the petitioner if the findings recorded in the enquiry proceedings so justify.

42. It may be noted here incidentally that in the peculiar circumstances of this case I have been constrained to make certain observations against the petitioner which, I am sure, will not weigh with the concerned authority in the matter of conducting the disciplinary proceeding or in recording the findings, etc.

43. Since the matter is now pending for quite a long time, the respondent-Bank should start the enquiry proceedings if at all, within a period of thirty days from this date and conclude it within the specified period.

No order is made for costs.